

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 9, 2016

Elisabeth A. Shumaker  
Clerk of Court

In re: DERRICK IVAN JIM,

Petitioner.

No. 16-2083  
(D.C. No. 1:10-CR-02653-JB-1)  
(D. N.M.)

ORDER

Before **KELLY, O'BRIEN**, and **MORITZ**, Circuit Judges.

Derrick Ivan Jim seeks a writ of mandamus to compel the district court to resentence him forthwith. We deny the petition.

Mr. Jim was convicted by a jury of aggravated sexual abuse and sentenced to 360 months' imprisonment. We affirmed Mr. Jim's convictions on appeal but granted the government's cross appeal that challenged the district court's calculation of his offense level under the sentencing guidelines. This court therefore remanded the case for resentencing. *See United States v. Jim*, 786 F.3d 802, 817 (10th Cir. 2015). In December 2015, following the Supreme Court's denial of Mr. Jim's petition for a writ of certiorari, this court issued a mandate remanding the case to the district court.

In March 2016, Mr. Jim filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Shortly thereafter the district court dismissed the motion as premature for lack of a final judgment, and referred resentencing to a magistrate judge for a recommendation. The matter is currently pending with the magistrate judge.

As grounds for mandamus relief, Mr. Jim argues that “[t]he district court has not conducted a re-sentencing or taken any action upon the Tenth Circuit’s mandate as of the date of the foregoing motion.” Pet. at 3. This is incorrect—the matter has been referred to a magistrate judge where it has been pending for approximately two months. Under these circumstances, Mr. Jim is not entitled to mandamus relief. *Cf. Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990) (recognizing in habeas context that an inordinate delay in deciding a habeas petition could justify mandamus relief).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk